

IDAPA 20 - DEPARTMENT OF LANDS

20.03.17 - RULES GOVERNING LEASES ON STATE-OWNED SUBMERGED LANDS AND FORMERLY SUBMERGED LANDS

DOCKET NO. 20-0317-0901

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1) Idaho Code and IDAPA 20.01.01, Rules of Practice and Procedure Before the State Board of Land Commissioners (Board), Sections 830 through 835, notice is hereby given that this agency has initiated proposed rulemaking procedures. This proposed rulemaking is authorized pursuant to Section 58-104(6), Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking, as well as changes pertaining to docket no. 20-0304-0901 also published in this Bulletin, will be held. The purpose of the hearing is to gather public comments on the proposed rules.

THURSDAY - OCTOBER 15TH, 2009 - 8 a.m.to 12 noon

**3780 Industrial Avenue South
Coeur d'Alene, Idaho**

The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Idaho Department of Lands (IDL) is initiating this rulemaking to clarify and correct some of the rule changes approved in 2008 and to provide continuity with IDAPA 20.03.04. The issues to be addressed by this rulemaking include, but are not limited to, removing the actual fee amounts from the rules and allowing the Board to set the fees, and clarifying the rights granted and how rental rates are determined. The lease modification process is also clarified. This rulemaking will be conducted in conjunction with the IDAPA 20.03.04 rulemaking.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

No changes to the existing fees are proposed.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

This is a general fund program. The department does not anticipate any fiscal impacts on the state general fund due to the proposed changes.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted.

The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 1, 2009 Idaho Administrative Bulletin, Vol. 09-7 page 98. Negotiations were conducted over three (3) meetings in June, 2009.

ASSISTANCE ON TECHNICAL QUESTIONS, AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Eric Wilson, (208) 334-0261 or ewilson@idl.idaho.gov. More information is also at <http://www.idl.idaho.gov/adminrule/rulemaking.html>.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 28, 2009.

DATED this 27th day of August, 2009.

Eric Wilson
Navigable Waters/Minerals Program Manager
Idaho Department of Lands
PO Box 83720, Boise, Idaho 83720
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 20-0317-0901

025. POLICY.

01. Policy of the State of Idaho. It is the policy of the state of Idaho to regulate and control the use and disposition of lands in the beds of navigable lakes, rivers and streams to the natural or ordinary high water mark thereof, so as to provide for their commercial, navigational, recreational or other public use; provided that the Board shall take no action in derogation of or seeking to interfere with the riparian or littoral rights of the owners of upland property abutting or adjoining such lands. (3-26-08)

02. Director May Grant Leases. The director may grant leases for uses that are in the public interest and consistent with these rules. (7-1-97)

03. Requests or Inquiries Regarding Navigability. The State owns the beds of all lakes, rivers, and streams that were navigable in fact at statehood. The Department will respond to requests or inquiries as to which lakes, rivers, and streams are deemed navigable in fact. Additional information about streams deemed navigable by the State of Idaho is available from the Department. (3-26-08)

04. Stream Channel Alteration Permit or Encroachment Permit. Issuance of a lease shall be contingent upon the applicant obtaining a stream channel alteration permit if required by the Idaho Department of Water Resources, pursuant to Title 42, Chapter 38, Idaho Code, or an encroachment permit if required by the Department pursuant to the Lake Protection Act, Title 58, Chapter 13, Idaho Code, and compliance with local planning and zoning regulations if applicable. (7-1-97)

05. Other Permits and Licenses. Issuance of a lease shall not relieve an applicant from acquiring other permits and licenses that are required by law. (7-1-97)

06. Submerged Lands Lease Required Upon Notification. All persons using submerged lands in a manner that requires a submerged land lease shall obtain such a lease from the director when notified to do so. (7-1-97)

07. Term of Lease, Renewal of Lease. Leases shall be issued for a term of ten (10) years or as determined by the board. Leases may be renewed for additional periods to be determined by the department based upon satisfactory performance during the present term. Renewals shall be processed with a minimum of procedural requirements and shall not be denied except in the most unusual circumstances or noncompliance with the terms and conditions of the previous lease. Lease renewals shall be initiated by the department. (3-26-08)

08. Director's Authorization to Issue and Renew Leases. The director is authorized to issue and renew leases for the use of submerged lands in accordance with these rules. (7-1-97)

09. Rights Granted. The lease grants only such rights as are specified in the lease. The right to use the ~~property~~ submerged or formerly submerged lands for all other purposes that do not interfere with the rights

authorized in the lease remains with the state.

(~~7-1-97~~)()

10. Rules Applicable to All Existing and Proposed Uses and Encroachments. These rules shall apply to all existing and proposed uses and encroachments, whether or not authorized by permit under the Lake Protection Act, Title 58, Chapter 13, Idaho Code, or the Stream Channel Protection Act, Title 42, Chapter 38, Idaho Code. These rules provide that a lease may be required in addition to existing permits. See Section 020 of these rules for information about exceptions to lease requirements. (3-26-08)

11. Waiver of Lease Requirements. The director may, in his discretion, waive lease requirements for single-family or two-family dock encroachments whose dock surface areas exceed square footages described in Subsections 020.01 through 020.03 of these rules when the additional dock surface area square footage is necessary to gain or maintain access to water of sufficient depth to sustain dock use for water craft customarily in use on that particular lake. (3-26-08)

12. Private Moorage at Commercial Marinas. (3-26-08)

a. This Subsection (025.12) does not apply to community docks. (3-26-08)

b. Private moorage at commercial marinas is allowed as long as the requirements of IDAPA 20.03.04, "Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho," Subsection 015.03 are met. (3-26-08)

c. The sale, lease, or rental of private moorage is in no way an encumbrance on any underlying public trust land. All transactions related to private moorage are subject to the limitations of the associated submerged lands lease. (3-26-08)

d. Acquisition of private moorage must be documented with a disclosure that the transaction does not convey public trust lands and only conveys the right to use the designated portion of the marina. (3-26-08)

e. The department shall make no policy regarding the cost of private moorage and the resolution of disputes between the involved parties. (3-26-08)

026. -- 029. (RESERVED).

030. LEASE APPLICATION, FEE, AND PROCEDURE.

01. Fee. The lease application fee shall be ~~one hundred fifty dollars (\$150)~~ determined by the Board. (3-26-08)()

02. Fee Shall Be Required. A lease application and nonrefundable fee shall be required for new and existing encroachments. A lease application fee shall be required for leases that are renewed upon expiration. (3-26-08)

03. Application to Lease and Fee. The lease application and fee shall be submitted with the information from Subsections 030.03.a. through 030.03.c., in sufficient detail for the department to determine an appropriate lease rate based on numbers of slips, square footage, or other permit information: (3-26-08)

a. A letter of request stating the purpose of the lease. (3-26-08)

b. A scale drawing of the proposed lease area with plans detailing all intended improvements, including reference to the nearest known property corner(s). An encroachment permit may satisfy this requirement. (3-26-08)

c. The permit number of each existing applicable encroachment permit. (3-26-08)

04. Submittal of Application to Lease and Fee. The lease application and fee shall be filed in the local office of the department, whose location is available on the Internet at www.idl.idaho.gov, or the director's

office in Boise. (3-26-08)

05. Notification of Approval or Denial. The applicant shall be notified in writing if the lease application is approved or denied. The applicant shall also be notified of any additional requirements. (3-26-08)

06. Request for Reconsideration. Any applicant aggrieved with the director's determination of rent or denial of a lease application may request reconsideration by the Director. (7-1-97)

031. -- 034. (RESERVED).

035. RENTAL.

The rental rate policy for submerged land leases shall be set by the Board. This policy is available on the Internet at www.idl.idaho.gov. (3-26-08)

01. Standardized Rental Rates. The board shall set standard submerged land lease rental rates for common uses such as commercial marinas, community docks, floathomes, restaurants, and retail stores. ~~These Rental rates may use for commercial marinas and other uses which produce revenue for the lessee will commonly be calculated as a percentage of market value or gross receipts, as well as~~ however, other methods may be used as determined appropriate by the board. (3-26-08)(____)

02. Nonstandard Rental Rates. The board shall direct the department to use a percentage of market value or gross receipts, or other methods determined appropriate by the board, as the submerged lands lease rental rate for uses that are uncommon, especially for non-navigational encroachments. (3-26-08)

(BREAK IN CONTINUITY OF SECTIONS)

050. LEASE MODIFICATION OR AMENDMENT.

01. Encroachment Amendment. A lease modification or amendment must first be permitted through an amendment to the lake encroachment permit or stream alteration permit, if needed. (3-26-08)

02. Modification of Existing Lease. Modification or amendment of an existing lease will be processed in the same manner as a new lease application, but no fee will be required. Modification or amendment includes change of use, location, size or scope of the lease site, but does not include ordinary maintenance, repair or replacement of existing structures or facilities. (3-26-08)(____)

03. Modification of Interior Facilities. ~~Changes in the interior arrangement of existing facilities that do not constitute a change of use and do not alter or enlarge the exterior dimensions, may not be deemed a modification under this rule. If the proposed changes to a facility do not require a new encroachment permit, a lease modification may still be needed as described in Subsection 050.02 of these rules. The lessee must give written notice to the Department at least ten (10) days in advance of making such changes.~~ The department shall determine if a lease modification is needed due to the proposed changes. ~~The lessee must give written notice to the Department at least ten (10) days in advance of making such changes.~~ When requested, ~~the~~ lessee shall also furnish one (1) set of as-built plans to the Department within thirty (30) days following completion of changes. (3-26-08)(____)

051. -- 054. (RESERVED).

055. ASSIGNMENTS, ASSIGNMENT FEE.

01. Assignment of Lease. Leases may be assigned upon approval of the director provided that the lease conforms with Subsection 025.02 and all other provisions of these rules. The assignor and assignee must complete the Department's standard assignment form and forward it to any department office. (7-1-97)

02. Assignment Fee. The assignment fee shall be ~~one hundred fifty dollars (\$150)~~ determined by the

Board.

~~(3-26-08)~~(____)

03. Permit Assignment. The encroachment permit/stream alteration permit pertinent to a lease must be assigned to a purchaser simultaneously with a lease assignment. A lease assignment will not be approved unless the permit is assigned. (3-26-08)

04. Approval Required for Assignment. An assignment is not valid until it has been approved by the director. (7-1-97)